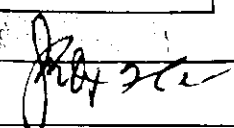


Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number LAW OFFICES OF DAVID S. HAGEN DAVID S. HAGEN - SBN 110588 16830 Ventura Blvd., Suite 500 Encino, California 91436-1795 (818) 990-4416 Fax: (818) 990-5680 <input type="checkbox"/> Individual appearing without counsel <input checked="" type="checkbox"/> Attorney for: Candice Rasche, Co-Trustee of Eucalyptus Trust	FOR COURT USE ONLY <div style="border: 1px solid black; padding: 10px; text-align: center;">FILED NOV 14 2005 </div> CHAPTER: 7 CASE NO.: LA 05-31776-ER DATE: 12/12/05 TIME: 1:30 pm CTRM: 1568 FLOOR: 15TH
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: LYONA DAVIS Debtor(s).	

**NOTICE OF MOTION AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR
ORDER CONFIRMING THAT THE AUTOMATIC STAY DOES NOT APPLY UNDER
11 U.S.C. § 362(l) (with supporting declarations)
(MOVANT: CANDICE RASCHE, TRUSTEE OF EUCALPTUS TR.)
(Unlawful Detainer)**

1. NOTICE IS HEREBY GIVEN to the Debtor(s), Debtor's(s') attorney, and other interested parties ("Responding Party") that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this Court for an Order granting relief from the automatic stay or for an order confirming that the automatic stay does not apply as to Debtor(s) and Debtor's(s') bankruptcy estate on the grounds set forth in the attached Motion.
- ☐ NOTICE IS ALSO GIVEN to the Trustee as an additional Responding Party, because the Motion relates to a nonresidential property.
2. Hearing Location: ☐ 255 East Temple Street, Los Angeles ☐ 411 West Fourth Street, Santa Ana
☒ 21041 Burbank Boulevard, Woodland Hills ☐ 1415 State Street, Santa Barbara
☐ 3420 Twelfth Street, Riverside
3. a. ☒ This Motion is being heard on REGULAR NOTICE pursuant to Local Bankruptcy Rule 9013-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon the Movant's attorney (or upon Movant, if the Motion was filed by an unrepresented individual) at the address set forth above no less than 14 days before the above hearing and appear at the hearing of the Motion.
- b. ☐ This Motion is being heard on SHORTENED TIME. If you wish to oppose this Motion, you must appear at the hearing. Any written response or evidence must be filed and served:
☐ at the hearing ☐ at least _____ court days before the hearing.
- (1) ☐ A Motion for Order Shortening Time was not required (according to the calendaring procedures of the assigned judge).
- (2) ☐ A Motion for Order Shortening Time was filed per Local Bankruptcy Rule 9075-1(b) and was granted by the Court and such motion and order have been or are being served upon the debtor and trustee, if any.
- (3) ☐ A Motion for Order Shortening Time has been filed and remains pending. Once the Court has ruled on that Motion, you will be served with another notice or an order that will specify the date, time and place of the hearing on the attached Motion and the deadline for filing and serving a written opposition to the Motion.

(Continued on next page)

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California

Motion for Relief from Stay (Unlawful Detainer) - Page 2 of 14

F 4001-1M.UD


In re LYONA DAVIS	(SHORT TITLE)	Debtor(s).	CHAPTER: 7 CASE NO.: LA 05-31776-ER
----------------------	---------------	------------	--

4. You may contact the Bankruptcy Clerk's Office to obtain a copy of an approved court form for use in preparing your response (*Optional Court Form F 4001-1M.RES*), or you may prepare your response using the format required by Local Bankruptcy Rule 1002-1.
5. If you fail to file a written response to the Motion or fail to appear at the hearing, the Court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

Dated: 11/10/05

LAW OFFICES OF DAVID S. HAGEN
Print Law Firm Name (if applicable)

DAVID S. HAGEN
Print Name of Individual Movant or Attorney for Movant


Signature of Individual Movant or Attorney for Movant

Motion for Relief from Stay (Unlawful Detainer) - Page 3 of 11

F 4001-1M.UD

In re LYONA DAVIS	(SHORT TITLE)	CHAPTER: 7
Debtor(s).		CASE NO.: LA 05-31776-ER

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR FOR ORDER CONFIRMING THAT THE
AUTOMATIC STAY DOES NOT APPLY
(Unlawful Detainer)**

(MOVANT: CANDICE RASCHE, TRUSTEE OF EUCALPTUS TR.)

1. **The Property at Issue:** Movant moves for relief from the automatic stay to obtain possession of the residential or nonresidential premises at the following address (the "Property"):

Street Address: 2151 Eucalyptus Ave.
Apartment/Suite No.:
City, State, Zip Code: Long Beach, CA 90806

The Property is: ☒ Residential ☐ Nonresidential

2. **Case History:**

- a. ☒ A voluntary ☐ An involuntary petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13
was filed on (specify date): 9/16/05
- b. ☐ An Order of Conversion to Chapter ☐ 7 ☐ 11 ☐ 12 ☐ 13
was entered on (specify date):
- c. ☐ Plan was confirmed on (specify date):
- d. ☐ Other bankruptcy cases of the Debtor were pending within the year ending on the petition date. See attached Declaration.
- e. ☐ Other bankruptcy cases affecting this Property have been pending within the two years ending on the petition date. See attached Declaration.

3. **Grounds for Relief from Stay: (Check all that apply)**

- a. ☒ Pursuant to 11 U.S.C. § 362(d)(1), cause exists because, as of petition date, Debtor(s) had no right to continued occupancy of the premises, as follows:
- (1) ☒ An unlawful detainer judgment in favor of Movant was entered prepetition.
- A. ☐ The debtor has not filed with the petition and served on the Movant the certification required under 11 U.S.C. § 362(l)(1).
- B. ☐ The debtor or adult dependent of debtor has not deposited with the Clerk any rent that would become due during the 30-day period after the filing of the petition.
- C. ☐ The debtor or adult dependent of debtor has not filed and served on the Movant the further certification required under 11 U.S.C. § 362(l)(2) that the entire monetary default that gave rise to the judgment has been cured.
- D. ☐ The Movant has filed and served an objection to the certification referenced in (a)(1)(A) and/or (a)(1)(C) above. A copy of the objection is attached hereto as Exhibit _____. A hearing on this objection is set for: _____.
- (2) ☐ An unlawful detainer proceeding was commenced prepetition.
- (3) ☒ Movant acquired title to the premises by foreclosure sale prepetition and recorded the deed within the period provided by state law for perfection.
- (4) ☐ Movant acquired title to the premises by foreclosure sale postpetition and recorded the deed within the period provided by state law for perfection.
- (5) ☐ The lease or other right of occupancy expired by its terms prepetition.
- (6) ☐ The lease has been rejected or deemed rejected by operation of law.
- (7) ☐ Lease payments have not been made since the filing of the petition.

Motion for Relief from Stay (Unlawful Detainer) - Page 4 of 21 F 4001-1M.UD

In re LYONA DAVIS	(SHORT TITLE)	Debtor(s).	CHAPTER: 7 CASE NO.: LA 05-31776-ER
----------------------	---------------	------------	--

(8) ☐ An eviction action has been filed to obtain possession of the subject residential property on grounds of endangerment of the property or because of illegal use of controlled substances on the property and Movant has filed and served upon Debtor a certification that ☐ such an action was filed or ☐ that within the 30 days preceding the certification Debtor has endangered the subject property or illegally allowed the use of controlled substances on the property. A copy of Movant's certification is attached as Exhibit _____. Debtor ☐ has ☐ has not filed an objection to Movant's certification. A copy of Debtor's objection, if any, is attached as Exhibit _____. A hearing on this objection is set for: _____.

b. ☒ Pursuant to 11 U.S.C. § 362(d)(2)(A), Debtor(s) has/have no equity in the Property; and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization.

c. ☐ The bankruptcy case was filed in bad faith to delay, hinder or defraud Movant.

(1) ☐ Movant is the only creditor or one of very few creditors listed on the master mailing matrix.

(2) ☐ Other bankruptcy cases have been filed asserting an interest in the same property.

(3) ☐ The Debtor(s) filed what is commonly referred to as a "face sheet" filing of only a few pages consisting of the Petition and a few other documents. No Schedules or Statement of Affairs (or Chapter 13 Plan, if appropriate) has been filed.

4. **Evidence in Support of Motion: (Important Note: Declaration(s) in support of the Motion MUST be attached hereto.)**

☐ Movant submits the attached Unlawful Detainer Declaration to provide evidence in support of this Motion pursuant to Local Bankruptcy Rules.

☒ Other Declaration(s) are also attached in support of this Motion.

WHEREFORE, Movant prays that this Court issue an Order granting the following (specify forms of relief requested):

1. ☒ Termination of the stay to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to obtain possession of the Property.

2. ☒ Annulment of the stay so that the filing of the bankruptcy petition does not affect postpetition acts, as set forth in the attached Declaration(s).

3. ☐ An order confirming that the automatic stay does not apply.

4. ☐ Alternatively, if immediate relief from stay is not granted with respect to the Property because the Property is the subject of a lease that may be assumable:

a. Establishment of a deadline for assumption or rejection of the lease.

b. Adequate protection in the form of regular payments at the lease rate from petition date until assumption or rejection of the lease.

(Continued on next page)

Motion for Relief from Stay (Unlawful Detainer) - Page 5 of 29

F 4001-1M.UD

In re LYONA DAVIS	(SHORT TITLE)	Debtor(s).	CHAPTER: 7	CASE NO.: LA 05-31776-ER
----------------------	---------------	------------	------------	--------------------------

5. Additional provisions requested:

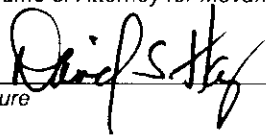
- a. ☐ That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.
- b. ☐ Termination or modification of the Co-debtor Stay of 11 U.S.C. § 1201 or § 1301 as to the above-named co-debtor, on the same terms and conditions.
- c. ☐ That the 10-day stay prescribed by Bankruptcy Rule 4001(a)(3) be waived.
- d. ☐ That Extraordinary Relief be granted as set forth in the Attachment (*attach Optional Court Form F 4001-1M.ER*).
- e. ☒ For other relief requested, see attached continuation page.

Dated: 11/10/05

Respectfully submitted,

CANDICE RASCHE
Movant Name

LAW OFFICES OF DAVID S. HAGEN
Firm Name of Attorney for Movant (if applicable)

By: 
Signature

Name: DAVID S. HAGEN
Typed Name of Individual Movant or Attorney for Movant

SUPPLEMENTAL RELIEF ATTACHMENT

In addition to seeking relief from stay to continue actions to evict the debtor from the premises, Movant also seeks relief to:

1. Relief to defend the Debtor's Complaint to Set Aside Foreclosure Sale (LASC NC 037053) through appeal, but not to pursue any money judgment against the Debtor without further order of this Court;
2. To strike the Debtor's Lis Pendens as it pertains to the property;

DECLARATION OF CANDICE RASCHE

I, CANDICE RASCHE, hereby declare and state as follows:

1. I am a co-trustee of The Eucalyptus Trust, the current owner of the residential real property commonly known as 2151 Eucalyptus Avenue, Long Beach, California. I have personal knowledge of the facts stated herein.

2. I am a trustee of the Eucalyptus Trust. The Trust acquired the property at a duly noted and scheduled foreclosure sale by Westar Financial Group's trustee pursuant to a note secured by a deed of trust recorded on October 21, 2004 as instrument number 04-2713353 by bidding and paying \$58,133.66 cash on May 23, 2005. The Trust then acquired title to the property when the trustee under Westar's deed of trust executed a Trustee's Deed which was recorded with the Los Angeles County Recorder as instrument 05-1201880 on May 23, 2005. A copy of the Trustee's Deed is attached hereto as Exhibit 1.

3. Thereafter, I, on behalf of the Trust, filed an unlawful detainer action in Los Angeles Superior Court entitled Rasche v. Davis, et al, in Long Beach Judicial District as Case No. 05U01660. Ms. Davis, the tenant, resisted the motion and raised the issue of the legitimacy of title. After trial, on July 21, 2005 the Superior Court issued its Writ of Possession of Real Property, a copy of which is attached hereto as Exhibit 2.

4. Thereafter, on August 18, 2005, in a follow up proceeding in the Los Angeles Superior Court, Long Beach Division, the Court, at the request of the Debtor, Davis, made oral findings, which included findings that the Debtor's testimony was not credible, and, more importantly, that The Eucalyptus Trust was a bona fide purchaser for

1 value. A copy of the transcript of that hearing is attached hereto
2 as Exhibit 3.

3 5. On September 20, 2005, without knowledge of the commencement
4 of the bankruptcy proceeding, the Sheriff dispossessed Ms. Davis from
5 the property. However, her furniture, clothing and other personal
6 property remain in the premises. Relief is sought herein to allow
7 Movant to return the personal property or otherwise dispose of it in
8 accordance with California law and for annulment of the stay with
9 respect to the disposition of the debtor from the property.

10 6. In the meantime, on June 1, 2005 the Debtor filed a complaint
11 in Los Angeles Superior Court (LASC NC 037053) to aside the
12 foreclosure sale and filed a lis pendens against the property which
13 has had the effect of clouding title and preventing the subsequent
14 marketing of the property. Since the Court has already ruled that the
15 Eucalyptus Trust is a bona fide purchaser, the Debtor's complaint has
16 no merit. Further, in this bankruptcy proceeding, the debtor has not
17 listed the lawsuit to set aside the sale as an asset on Schedule B nor
18 has claimed an exemption in the lawsuit on Schedule C. Thus, whatever
19 rights the debtor might have had inure solely to the chapter 7
20 trustee, not the Debtor.

21 7. Ms. Davis has not offered nor has she made any payments for
22 the fair rental value of the property since the commencement of the
23 case on September 16, 2005.

24 I declare under penalty of perjury that the foregoing statements
25 are true and correct, and I could, if called upon, competently testify

26 ///

27 ///

1 ///

2 ///

3 thereto.

4 DATED: November 10, 2005

5

6


CANDICE RASCHE

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit 1

This page is part of your document - DO NOT DISCARD

05 1201880

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

2:21 PM MAY 23 2005

TITLE(S) : DEED



LEAD SHEET

FEE		D.T.T
FEE \$10 V		64.35
2		
CODE 20		
CODE 19		
CODE 9		

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of Parcels Shown

7205 - 025 - 019

001

THIS FORM NOT TO BE DUPLICATED

Name: The Eucalyptus Trust
C/O Title Trust Services
Address: 14540 Victory Blvd. # 212

City: Van Nuys, California 91411

Mau Tax Statement to:
Same as above

Title Order: 03990669
T S #: 25-1079

05 1201880

** Customer Service
at
Fidelity National
Title
did not see a
Recorded
Notice of Trustee
Sale*

ORDERS USE

TRUSTEE'S

APN No. 7205-025-019

The grantee was not the Foreclosing Beneficiary
The amount of the unpaid debt together with
The amount paid by the grantee at the Trustee
The Documentary Transfer Tax is.....

Property is in the County of Los Angeles, California

33.66

33.66

\$64.35

43

and Title Trust Services (herein called "Trustee"), as the duly appointed Trustee under the Deed of Trust herein after described, does hereby grant and convey, but without warranty, express or implied to:

Candice Rasche, Co-Trustee of The Eucalyptus Trust

(herein called "Grantee"), all of its right, title and interest in and to that certain property situated in the County of Los Angeles, State of California, described as follows:

Legal Description

Lot 6 in Block 1 of Tract No. 10243, in the City of Long Beach, County of Los Angeles, State of California, as per Map recorded in Book 145, Pages 3 and 4 of Maps, in the office of the County Recorder of said county.

Common address: 2151 Eucalyptus Avenue
Long Beach, California 90806

AP # 7205-025-019

Recitals:

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust dated October 15, 2004 and executed by Lyona McPherson Davis, an Unmarried Woman as Trustor, and recorded October 21, 2004 as instrument # 04-2713353 in Book N/A, page N/A of official Records of Los Angeles County, California and after fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance.

05 1201880

3

Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the Recorder of said County. All requirements of law regarding the mailing of copies of notices or the publication of a copy of the Notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of the Notice of Sale have been complied with.

Said property was sold by said Trustee at public auction on May 23, 2005 at the place named in the Notice of Sale, in the County of Los Angeles California, in which the property is situated. Grantee, being the highest bidder at such sale, became the purchaser of said property and paid therefore to said Trustee the amount being \$58,133.66 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by said Deed of Trust.

Date: May 23, 2005


Title Trust Services
By: C. Islas

State of California
County of Los Angeles

On May 23, 2005 before me, ALAN LAWRENCE, Notary Public personally appeared
C. Islas

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  (Seal)



Exhibit 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state ...)

Main Document

Page 15 of 33

FOR COURT USE ONLY

Dennis P. Block
Dennis P. Block & Associates Bar No. 70194
4929 Wilshire Blvd., Suite 300

Los Angeles, CA 90010

TELEPHONE NO.: 323 938-2868

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): PLAINTIFF

☒ ATTORNEY FOR ☒ JUDGMENT CREDITOR ☐ ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: 415 W. OCEAN BLVD.

MAILING ADDRESS:

CITY AND ZIP CODE: LONG BEACH, CA 90802

BRANCH NAME: LONG BEACH JUDICIAL DISTRICT

PLAINTIFF: CANDICE RASCHE, CO TRUSTEE OF THE EUCALYPTUS TRUST

DEFENDANT: LYONA MCPHERSON DAVIS

WRIT
OF
☐ EXECUTION (Money Judgment)
☒ POSSESSION OF ☐ Personal Property
☒ Real Property
☐ SALE

CASE NUMBER

05U01660

1. To the Sheriff or any Marshal or Constable of the County of: LOS ANGELES

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accord with CCP 699.080 or CCP 715.040.

3. (Name): CANDICE RASCHE, CO TRUSTEE OF THE EUCALYPTUS TRUST

is the ☒ judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name and last known address):

LYONA MCPHERSON DAVIS
2151 EUCALYPTUS AVE.,
LONG BEACH, CA 90806

9. ☒ See next page for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale.10. ☐ This writ is issued on a sister-state judgment.

11. Total judgment \$

12. Costs after judgment (per filed order or memo CCP 685.090) \$

13. Subtotal (add 11 and 12) \$

14. Credits \$

15. Subtotal (subtract 14 from 13) \$

16. Interest after judgment (per filed affidavit CCP 685.050) \$

17. Fee for issuance of writ \$ 9.00

18. Total (add 15, 16, and 17) \$ 9.00

19. Levying officer:

(a) Add daily interest from date of writ (at the legal rate on 15) of \$

(b) Pay directly to court costs included in 11 and 17 (GC 6103.5, 68511.3; CCP 699.520(f)) \$

20. ☐ The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.☐ additional judgment debtors on next page

5. Judgment entered on (date): 7-12-05

6. ☐ Judgment renewed on (dates): AP

7. Notice of sale under this writ

a. ☒ has not been requested.b. ☐ has been requested (see next page).8. ☐ Joint debtor information on next page.

(SEAL)

Issued on (date): JUL 21 2005 JOHN A. CLARKE

Clerk, by D. PIROZZI, Deputy

NOTICE TO PERSON SERVED: SEE NEXT PAGE FOR IMPORTANT INFORMATION.

Page 1 of 2

JUDGMENT

05U01660

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
SOUTH DISTRICT, LONG BEACH COURTHOUSE (19400)
415 W OCEAN BLVD / MAIL: PO BOX 2840, LONG BEACH, CA 90802
Telephone: (562) 491-6234

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT JUDGMENT BE ENTERED AS FOLLOWS:

FOR: RASCHE, CANDICE CO TRUSTEE OF THE EUCALYPTUS TRUST

89665

AGAINST: DAVIS, LYONA MCPHERSON

\$ 6416.41 Principal,
Costs per filing of memorandum of costs.

RESTITUTION AND POSSESSION OF THE PREMISES LOCATED AT:
2151 EUCALYPTUS AVE,
LONG BEACH, CA 90806

THIS JUDGMENT OF POSSESSION APPLIES TO ANY AND ALL UNNAMED OCCUPANTS OF THE PREMISES
PURSUANT TO C.C.P. 415.46.

This judgment conforms to the order of the court.

DATED: 08/18/2005

ROY L. PAUL
JUDGE, SUPERIOR COURT

=====

FILED AND ENTERED ON: 08/18/2005
BY K. GAINES
DEPUTY CLERK

JOHN A. CLARKE
Executive Officer/Clerk

CIV 4

JUDGMENT

14

Exhibit 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTH S

HON. ROY L. PAUL, JUDGE

CANDICE RASCHE,

PLAINTIFF.

VS.

05U01660

LYONA MCPHERSON DAVIS,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, AUGUST 18, 2005

APPEARANCES:

FOR THE PLAINTIFF:

KATZ AND BLOCK
BY: JOHN H. GREENWOOD, ESQ.
4929 WILSHIRE BOULEVARD, SUITE 300
LOS ANGELES, CALIFORNIA 90010

FOR THE DEFENDANT:

MENKE LAW FIRM
BY: BRUCE MENKE, ESQ.
5000 EAST SPRING STREET, SUITE 405
LONG BEACH, CALIFORNIA 90815

HELEN J. BAUGH, CSR #2142

OFFICIAL REPORTER

COPY

1 LONG BEACH, CALIFORNIA, THURSDAY, AUGUST 18, 2005

2 A.M. SESSION

3 DEPARTMENT SOUTH S

HON. ROY L. PAUL, JUDGE

4 (APPEARANCES AS NOTED ON TITLE PAGE.)

5 -000-

6 THE COURT: No. 9, Rasche versus Davis.

7 (Proceedings not reported.)

8 THE COURT: The record can reflect that I called
9 the case of Candice Rasche versus Lyona McPherson Davis --

10 MR. GREENWOOD: Here she comes.

11 THE COURT: We can go off the record.

12 (Discussion off the record.)

13 If you'll come back to the witness stand and
14 we'll proceed.

15 (Proceedings not reported.)

16 (At 11:50 p.m., the following proceedings
17 were held.)

18 THE COURT: The record can reflect a request for
19 Statement of Decision was made, though it wasn't made at the
20 time it was deemed submitted, and the court will still accept
21 that, and Mr. Greenwood, I'm going to ask that you might
22 in fact prepare this.

23 On the conclusion the court will note that I can
24 make an oral one, an oral Statement of Decision on the record,
25 and this case lasted for -- we started about 10:15 and it's
26 about 10 minutes to 12:00 so it's an hour and 45 minutes
27 possibly, so the court will note the following.

28 First of all, the court will find that the

1 credibility of Ms. Davis, the court will find that there
2 was -- in fact I believe based upon her testimony that
3 she willfully falsely stated that she failed to sign
4 the Deed of Trust.

5 The court notes that that is of such
6 significance, since all the facts arise from the Deed of
7 Trust, Ms. Davis said that it was forged, this court does not
8 find that credible. Her testimony indicated she received
9 the sums of money pursuant to the Deed of Trust, but that in
10 looking at her signature the day before it was not the same
11 signature, and she believed it was forged.

12 I find that her willful false statement was
13 so material that I in fact find that the remainder of her
14 testimony is distrustful.

15 The court notes that the first issues before me,
16 and we will deal, first of all, with the Deeds of Trust,
17 et cetera, the court finds that the plaintiffs in this case,
18 the plaintiff is a bona fide BFP, a bona fide purchaser
19 who purchased for value in good faith and without actual
20 constructive notice of other's rights, and let's spend a
21 moment and deal with that.

22 The defense argues that she wasn't because
23 she had some dealings with Westar, and the court has admitted
24 defendant's A and B, it's clearly insufficient evidence
25 to conclude that she's not a BFP, but let's take it a step
26 further.

27 Let's take it to the second step which is
28 what would she have knowledge of that's of issue in this case,

1 the issue presented by the defense is the defect in the
2 substitution of attorney.

3 She has no notice --

4 MR. MENKE: For the record, substitution of --

5 THE COURT: Excuse me, substitution of Trustee, and
6 the court will correct that, substitution of Trustee, she had
7 no notice of any defect in the substitution of the Trustee.

8 The court notes by looking at the Civil Code,
9 dealing with Civil Code Section 1214 which might be prior
10 recordings of subsequent conveyances, or mortgages, or
11 judgments, and I derive that section by reading the section
12 under Witkins under BFP and noting that she had no
13 constructive or actual notice of any defect that would
14 actually affect the property, and this case, clearly there is
15 no evidence she clearly had any notice of any defect in the
16 substitution of the Trustee which took place prior to her
17 purchase.

18 The court finds that she is a BFP and entitled
19 to those statutory rights under BFP status, and the court
20 notes also in looking at the trustee's deed that it clearly
21 reflects that she purchased it for value, and I want to point
22 out that she is not a creditor, she is a bona fide purchaser,
23 and the inference that Mr. Menke would have the court draw is
24 because plaintiff had dealings with Westar and gave
25 inconsistent testimony, and the court noted she clearly didn't
26 know what those were and there was some inconsistency, but it
27 did not rise to the level of negating BFP status.

28 Assuming she had some contact with Westar in some

1 form or fashion, does that preclude her from being a bona fide
2 purchaser in good faith, and the court doesn't find there is
3 any evidence to reflect actual or constructive notice of
4 defects.

5 The court notes that, dealing with the next issue
6 which is the substitution of the Trustee, and I've done
7 extensive research in this and I particularly note some of the
8 following cases.

9 The case of Knap versus Doherty, 123 Cal.App.4th
10 76, the court was able to garner that in this particular case
11 as claimed by Mr. Menke that we have a wild card deed or a
12 deed that can break a title because the substitution of
13 Trustee was in fact recorded after the notice of default,
14 and what I garnered from this case that --

15 MR. MENKE: So I'm clear, my argument is not
16 recordation.

17 THE COURT: No, it's not recordation.

18 MR. MENKE: It's execution.

19 THE COURT: The court will reflect it's execution.

20 The court notes the basic statement Mr. Menke
21 appears to be claiming that it's an improper procedure.

22 One of the facts the court garnered out of
23 this case is there needs to be some form of prejudice stemming
24 from an irregularity, and the court doesn't find any
25 prejudice, because the operative documents, the primary
26 document which is the deed of sale, the trustee's deed and the
27 sale occurred after the substitution of attorney, and I'm
28 going to go through that further because I read a number of

1 cases --

2 MR. GREENWOOD: Substitution of Trustee.

3 THE COURT: Substitution of Trustee, I keep saying
4 attorney.

5 MR. MENKE: We assume if you say "attorney," in the
6 future, you mean Trustee.

7 THE COURT: The court will correct the record,
8 because I want it to be reflected as substitution of trustee,
9 there is no resulting prejudice, and the court notes that is
10 what the court garnered out of this case.

11 A nonjudicial foreclosure sale is presumed to
12 have been conducted regularly and fairly, one attacking the
13 sale must overcome this common law presumption by pleading and
14 proving an improper procedure and the resulting prejudice.

15 If a trustee's deed contains a recital
16 that all default and sale notices have been given,
17 the notice requirements are statutorily presumed to have been
18 satisfied, which presumption is conclusive as to the bona fide
19 purchaser at the foreclosure sale.

20 Now going to Civil Code Section 2924.

21 The court looks at 2924 and notes that some
22 operative language here, which was argued by the plaintiff
23 particularly, and I'm going to start in the middle of the
24 code section, and I'm going to abbreviate and leave some of it
25 out.

26 Where, by a mortgage of any estate in real
27 property, a power of sale is conferred upon the mortgagee,
28 trustee, or any other person, and the court adds emphasis

1 to any other person, to be exercised after a breach of the
2 obligation for which that mortgage or transfer is a security,
3 the power shall not be exercised except where, and I'll skip a
4 portion.

5 In subsection (a), until the trustee, mortgagee,
6 or beneficiary, or any of their authorized agents shall first
7 file for record, in the office of the recorder, a notice of
8 default.

9 It doesn't say anywhere that it must be the
10 trustee, it says authorized agent.

11 The court has examined the cases also in
12 Moeller versus Lien, 25 Cal.App.4th 822.

13 This case holds that the presumption is
14 conclusive as to a bona fide purchaser with all the statutory
15 recitations of the trustee's deed, a recitation that all the
16 statutory notices and procedures required by law for the
17 conduct of the foreclosure sale have been satisfied, a
18 rebuttable presumption arises if the sale has been conducted
19 regularly and properly.

20 The court notes in this case what is interesting
21 is it says there is some required procedure which deprives the
22 trustor of his right of reinstatement or redemption, again,
23 as the court notes in looking at the issue of prejudice.

24 The court has read Homestead Savings
25 versus Darmiento, 230 Cal.App.3d 424, again dealing
26 with the rights of a BFP and a conclusive presumption of
27 compliance.

28 The court has read the case of Jones versus First

1 American Title Insurance Company, 107 Cal.App.4th 381,
2 again this case goes to the issue that -- in the Jones case
3 the trial court entered a judgment that a real estate
4 foreclosure sale was void because the sale was mistakenly
5 conducted by a former trustee after a new trustee had been
6 substituted and his substitution was not properly recorded
7 as required under 2934(a).

8 The court of appeal reversed and under the
9 circumstances indicated reformation was necessary to carry out
10 the manifest intent of the parties because one of the
11 documents necessary was deficient. This was raised two years
12 after the foreclosure.

13 The court further notes that the note was
14 admitted into evidence via the trustee's deed, the Deed
15 of Trust was in fact admitted into evidence, if I'm missing an
16 exhibit --

17 MR. GREENWOOD: Exhibit 1.

18 THE COURT: That's Exhibit 1.

19 Exhibit 2 was the Amendment to the Note and
20 Deed of Trust signed by the defendant.

21 Exhibit 3, the Notice of Default, and the court
22 does note the date that it was executed, January 4, 2005;

23 Exhibit 4, the Substitution of Trustee executed
24 March 28, 2005;

25 Exhibit 5, Trustee's Deed upon sale indicating
26 the value, and particularly the court notes the grantee was
27 not the foreclosing beneficiary;

28 Exhibit 6, and I'll deal with the three-day

1 notice to quit;

2 Exhibit 7, the Proof of Service.

3 The court does find that the three-day notice
4 and the Proof of Service pursuant to the testimony of the
5 registered process server are in fact valid, were in fact
6 properly served.

7 The court notes that there was no evidence
8 presented by way of the defense as to any payments made
9 or any prejudice suffered, payments made on the Deed of Trust
10 or any prejudice suffered from the substitution of trustee.

11 The court will note that the case law indicates
12 that the defendant has no right to object to a substitution of
13 trustee.

14 The court has read the case before it,
15 U.S. Hertz versus Niobrara Farms cited at 41 Cal.App.3d 68,
16 though it analogizes, of course in this case is that the
17 defect was, as claimed, a break in title because it was
18 recorded just a few moments before.

19 The court then notes in reading all these cases
20 that there is no prejudice that's been shown to the defendant
21 as a result of the substitution of trustees execution date.

22 The sale that was conducted, and that's the
23 very operative portion of this case, the sale was conducted
24 with all the documents at the time of sale properly and
25 procedurally correct.

26 The court notes that the power of sale was
27 conducted by a party who had the right to conduct the sale.

28 Based upon -- the court has further reviewed

1 three other cases, Dimock versus Emerald Properties,
2 81 Cal.App.4th 868, Kessler versus Bridge, 161 Cal.App.2d 837,
3 in this case the plaintiff must prove affirmatively the
4 property was duly sold and that the title under the sale
5 was perfected, the court will make these findings, this
6 dealing with the landlord-tenant and unlawful detainer.

7 The court wants to make it very clear I make
8 a finding that the property was duly sold with the rights of
9 power by the trustee at the time and that the title under
10 the sale had been duly perfected.

11 Lastly, before I make the final ruling I just
12 want to put this on the record so it's very clear.

13 On August 15th, defendant Lyona Davis' motion
14 for, No. 1, a new trial under CCP 657, and, No. 2, a motion
15 for a new and different judgment under CCP 663 were heard.
16 As reflected in the court's minutes, the motion for a new
17 trial was granted on the grounds that the court had committed
18 legal error by precluding defendant's attack on the validity
19 of a trustee's sale in the unlawful detainer action.

20 The court denied the companion CCP 663 motion,
21 rejecting defendant's contention that plaintiffs had failed
22 to make out a prima facie case of her right to possession on
23 the subject premises.

24 The court reasoned that although it had
25 committed error by precluding defendant's issue of title,
26 it could make no assumption the defendant would ultimately
27 prevail, and the court trial for unlawful detainer was set
28 for August 18 at 8:30.

1 Prior to the commencement of the new trial,
2 defendant filed a notice purporting to appeal from this
3 court's denial of the 663 motion.

4 On the day of the trial, defendant contested
5 the court's jurisdiction to proceed based on her perfection
6 of an appeal, and purported to, quote, "specially appear,"
7 end of quote.

8 The court rules that it has jurisdiction to
9 proceed with this trial on this date;

10 No. 1, the order denying the CCP 663 motion
11 is not appealable under CCP 904.2. An improper appeal does
12 not divest the trial court of jurisdiction.

13 No. 2, defendant, having requested a new
14 trial was estopped from challenging the propriety of a
15 new trial once relief is granted.

16 No. 3, although defendant presented some
17 authority, Socol versus King 2004, 34 Cal.App 2d 292,
18 stating denial of the 663 motion is appealable, that case
19 held that such an order was appealable after a final
20 judgment. There was no final judgment in this case at the
21 time the appeal was noticed.

22 Consequently, the court orders that the trial
23 is to proceed and defendant's objection to jurisdiction is
24 overruled.

25 The court will make the following final ruling:
26 Judgment will be entered as follows:

27 For Candice Rasche, co-trustee of the
28 Eucalyptus Trust, against Lyona Davis McPherson for rent and

1 damages, and I'm not sure what --

2 MR. GREENWOOD: Excuse me, Your Honor, since there
3 really isn't a landlord-tenant relationship you can't call it
4 rent.

5 THE COURT: I will correct that, because I did note
6 that it is only damages, it's not rent, and the damages
7 through today, have you computed those?

8 MR. GREENWOOD: No, I have not.

9 THE COURT: Let's do that right now.

10 LYONA DAVIS: I was not served. This is not fair to
11 take -- my house is over a million dollars, it's not fair,
12 this is not justice, this is not fair.

13 MR. GREENWOOD: It's 77 times 83.33.

14 THE COURT: 77 days for 83.33 a day, comes to
15 6,416.41.

16 MR. GREENWOOD: I'm showing we get the same thing.

17 THE COURT: I did it twice. I get 6,416.41, and for
18 costs previously ordered of \$222.30.

19 MR. GREENWOOD: I would be happy to file a cost bill,
20 Your Honor.

21 THE COURT: You're ordered to do so.

22 Restitution and possession of the premises
23 located at 2151 Eucalyptus Avenue, Long Beach, 90806.

24 This judgment of possession applies to any and
25 all unnamed occupants of the premises pursuant to CCP 415.46,
26 and there is no requirement at this time to have any
27 forfeitures because there is no lease.

28 MR. MENKE: Agreed, Your Honor.

1 THE COURT: So I think that concludes all the issues
2 before the court today.

3 MR. GREENWOOD: Thank you for your tremendous effort
4 you put into this matter, Your Honor.

5 THE COURT: The record can reflect the Statement of
6 Decision is deemed to be my oral statement on the record,
7 I don't need -- Mr. Greenwood, for you, since I'm permitted
8 to do it on the record --

9 MR. GREENWOOD: Of course, thanks.

10 THE COURT: I put that on the record so that Mr. Menke
11 will have specifically the grounds.

12 Let me just take one last second to make sure
13 I covered all the notes that I have.

14 MR. GREENWOOD: Might your record also reflect our
15 thanks for the tremendous effort that your attorney
16 assistant -- I forgot his actual title, gave -- the research
17 attorney gave in assisting the court in being able to analyze
18 these facts.

19 MR. MENKE: I certainly want to thank also
20 Mr. Freedman, we certainly appreciate the court as well.

21 (Proceedings concluded.)
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SOUTH S

HON. ROY L. PAUL, JUDGE

CANDICE RASCHE,

PLAINTIFF.

VS.

LYONA MCPHERSON DAVIS,

DEFENDANT.

05U01660

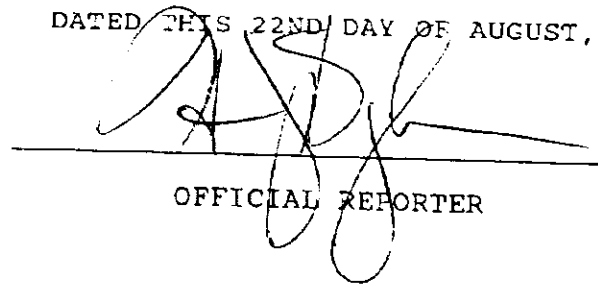
REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I, HELEN J. BAUGH, OFFICIAL REPORTER OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES, 1 TO 12, INCLUSIVE, COMPRISE A FULL, TRUE, AND
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER ON THURSDAY, AUGUST 18, 2005.

DATED THIS 22ND DAY OF AUGUST, 2005



CSR #2142

OFFICIAL REPORTER

Motion for Relief from Stay (Unlawful Detainer) - Page 19 of 29

F 4001-1M.UD

In re LYONA DAVIS	(SHORT TITLE)	Debtor(s).	CHAPTER: 7 CASE NO.: LA 05-31776-ER
----------------------	---------------	------------	--

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

1. I am over the age of 18 and not a party to the within action. My business address is as follows:
16830 Ventura Blvd., Suite 500, Encino, CA 91436
2. **Regular Mail Service:** On 11/10/05, pursuant to Local Bankruptcy Rule 9013-1, I served the documents described as: NOTICE OF MOTION and MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (with supporting declarations) on the interested parties at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at Encino, California, addressed as set forth on the attached list.

NOTE: If the Notice and Motion have been served pursuant to an Order Shortening Time ("Order"), you must file a Proof of Service that indicates that the notice and service requirements contained in the Order have been met.

3. **See attached list for names and addresses of all parties and counsel that have been served.** (In the manner set forth in Local Bankruptcy Rule 7004-1(b), specify capacity in which service is made; e.g., Debtors, Debtor's(s') Attorney, Trustee, Trustee's Attorney, Creditors Committee, or 20 largest unsecured creditors, etc.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 11/10/05

DAVID S. HAGEN
Typed Name


Signature

SERVICE LIST

Debtor:

Lyona M. Davis
2151 Eucalyptus Ave.
Long Beach, CA 90806

Debtor's Counsel:

Julie R. Gaviria
806 E. Broadway Ave.
San Gabriel, CA 91776-1927

Trustee:

David A. Gill
Danning, Gill, Diamond & Kollitz
2029 Century Park East, 3rd Floor
Los Angeles, CA 90067

U.S. Trustee

Office of U.S. Trustee
725 S. Figueroa St., 26th Floor
Los Angeles, CA 90017